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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte NINA T. BHATTI and TAREK FAROUK ABDELZAHER

Appeal 2009-013726
Application 09/299,684
Technology Center 2400

Before JOHN A. JEFFERY, ST JOHN COURTENAY III, and ANDREW J. DILLON, *Administrative Patent Judges*.

DILLON, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1-6, 8-12 and 15. We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

STATEMENT OF THE CASE

Appellants' invention is a data service system which stores content for access by external service requests. Each of the content files is stored in full content format and in an adapted or degraded content format. An adaptive

load control modifies an access request to access the adapted content format when the content server is in an overload condition. *See* Abstract.

Claim 1 is illustrative with key disputed limitations emphasized:

> 1. A data service system in a data service network system, comprising:
>
> a content server that statically stores a plurality of content files for access by external access requests, wherein a first of said plurality of content files comprises content stored in a full content format and wherein a second of said plurality of content files comprises corresponding content stored in an adapted content format which is less resource-intensive to serve than the full content format; and
>
> an adaptive load control system coupled to said content server to pass the access requests to said content server, *wherein the adaptive load control system modifies an access request address to access said second of said plurality of content files instead of said first of said plurality of content files by modifying a URL (Universal Resource Locator) of the access request address when said content server is in an overload condition* such that said content server is maintained at safe load conditions, said adaptive load control system comprising:
>
> a load monitor that monitors the load condition of said content server without requiring monitoring of the network, said load monitor establishing the load condition of said content server by measuring an amount of time between when said content server receives the external access request and when said content server provides the external access request.

The Examiner relies on the following as evidence of unpatentability:

Danneels	US 6,038,598	Mar. 14, 2000 (Filed Feb. 23, 1998)
Abbott	US 6,314,463 B1	Nov. 6, 2001 (Filed May 29, 1998)

Engelschall, Ralf S., Apache HTTP Server Version 1.3 *Module mod_rewrite*, pg. 1-18, (1998) (hereinafter "Engelschall")

THE REJECTION

The Examiner rejected claims 1-6, 8-12 and 15 under 35 U.S.C. § 103(a) as unpatentable over Danneels, Engelschall and Abbott. Ans. 3-8.[1]

CONTENTIONS

Regarding representative claim 1, the Examiner finds that Danneels discloses a data service network system having a content server that statically stores content files in full content format and corresponding content files in adapted content format, with an adaptive load control system that modifies an access attempt to provide the adaptive content format when the content server is in an overload condition. The Examiner notes that Danneels does not explicitly show that the adaptive load control modifies the access attempt by modifying the URL (Universal Resource Locator) of an access request address, but cites Engelschall for that teaching. The Examiner cites Abbott for the teaching of a load monitor that monitors the load condition of a content server without requiring monitoring of the network. Ans. 3-5.

Appellants argue that Danneels teaches away from the modification of an access request address by modifying a URL (Universal Resource Locator) and consequently cannot be combined with Engelschall. In support of this position, Appellants cite Danneels' express statement that the web

[1] Throughout this opinion, we refer to (1) the Appeal Brief filed December 9, 2008; (2) the Examiner's Answer mailed April 1, 2009; and (3) the Reply Brief filed June 1, 2009.

server therein maps a plurality of web pages to a single uniform resource locator (URL). Col. 1, line 66 through Col. 2, line 1; App. Br. 10; Reply Br. 3. The issues before us, then, are as follows:

ISSUES

1. Under § 103, has the Examiner erred in rejecting claims 1-6, 8-12 and 15 by finding that Danneels, Engelschall and Abbott collectively would have taught or suggested (1) a content server storing multiple content files for external access requests, including files stored in both full and adapted content format, and (2) modifying an access request address by modifying a URL (Universal Resource Locator) to return an adapted content format version of the requested file in response to an overload condition of the content server?

2. Is the Examiner's reason to combine the teachings of these references supported by articulated reasoning with some rational underpinning to justify the Examiner's obviousness conclusion?

FINDINGS OF FACT

We find that the following enumerated findings of fact (FF) are supported by at least a preponderance of the evidence. *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Office).

1. Danneels teaches a method and system whereby multiple web page sets are installed on a computer and, upon receipt of a request for access the system evaluates conditions and determines which of the web page sets to return. Abstract

2. Danneels notes that multiple web pages may be "mapped" to a single uniform resource locator (URL). Col. 1 line 66 through Col. 2, line 1.
3. Engelschall teaches that a requested URL may be rewritten "on the fly." Page 1.
4. Abbott teaches a load monitor that does not require monitoring of the network. Col. 2, lines 54-61.

ANALYSIS

The rejection of claims 1-6, 8-12 and 15 under § 103 as unpatentable over Daneels, Engelschall and Abbott

The thrust of all of Appellants arguments is that Danneels "teaches away" from the Examiner's proposed combination of these references. The entire basis for this assertion of "teaching away" is the statement within Danneels that a plurality of web pages is mapped "to a single uniform resource locator (URL)." Col. 1 line 66 through Col. 2 line 1; App. Br. 10; Reply Br. 3. Appellants do not contradict the Examiner's assertion that Engelschall teaches that it is known to rewrite a requested URL "on the fly" or that Abbott teaches a load monitor that does not require monitoring of the network.

We believe Appellants have misapprehended the meaning of "mapped" in this context. The fact that multiple web pages may be "mapped" to a single URL does not mean that each of those web pages has the same URL.

Indeed, a cursory review of Danneels reveals that, for example, the URL for the second page within the first copy of the document in question is http://server/d1/page2.html while the URL for the same page of the second copy of the document in question is http://server/d2/page2.html. Col. 2 line 65 through Col. 3 line 2. Consequently, an access request for that page will have the associated URL internally rewritten by the Danneels system based upon the current state of the database.

We concur with the Examiner's position that this technique is very similar to the technique disclosed by Appellants and that a combination of Danneels with Engelschall would be obvious to one of ordinary skill in the art. Our reviewing court has held "[t]he prior art's mere disclosure of more than one alternative does not constitute a teaching away from any of these alternatives because such disclosure does not criticize, discredit, or otherwise discourage the solution claims in the '198 application." *In re Fulton*, 391 F.3d 1195, 1201 (Fed. Cir. 2004).

This reasoning is applicable here. We are therefore not persuaded that the Examiner erred in rejecting claims 1-6, 8-12 and 15.

CONCLUSION

The Examiner did not err in rejecting claims 1-6, 8-12 and 15 under § 103.

ORDER

The Examiner's decision rejecting claims 1-6, 8-12 and 15 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

pgc